

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

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|-----------------------------|---|-------------------------------|
| FISTON NGOY, |) | CIVIL ACTION NO. 3:18-cv-1584 |
| Petitioner |) | |
| |) | (MUNLEY, D.J.) |
| v. |) | |
| |) | (ARBUCKLE, M.J.) |
| CLAIR DOLL, <i>et al.</i> , |) | |
| Respondents |) | |

ORDER

ORDER TO SHOW CAUSE

On August 9, 2018, the Court received and filed a petition for a writ of habeas corpus submitted pursuant to 28 U.S.C. § 2241. The Court also received an Application for an Order to Show Cause (Doc. 2). The filing fee has been paid. The several named respondents to the petition include: and Clair Doll, Warden of York County Prison; Jeff Sessions, Attorney General of the United States; Kirstjen M. Nielsen, Secretary of Homeland Security; Simona Flores, Field Office Director for the Bureau of Immigration and Customs Enforcement, Philadelphia District Thomas D. Homan, Acting Director of Immigration and Customs Enforcement. At the time of filing, the Petitioner was being detained at York County Prison, thus the Warden is his custodian and the proper respondent to this petition under Third Circuit precedent. *See* 28 U.S.C. § 2243; *Yi v. Maugans*, 24 F.3d 500, 507 (3d Cir. 1994). *But see Rumsfeld v. Padilla*, 542 U.S. 426, 435 n.8 (2004) (recognizing circuit split and declining to resolve it). The Petitioner, however, will not be

required to submit an amendment. Instead, the Court will liberally construe the petition as naming the appropriate respondent. *See Maher v. Pa. Bd. of Probation & Parole*, No. 3:04-CV-1277, 2005 WL 1324879, at *1 n.2 (June 3, 2005).

Accordingly, **IT IS HEREBY ORDERED THAT:**

1. The Court exercises its discretion under Rule 1(b) of the Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. foll. § 2254, to apply those rules to this § 2241 petition.
2. The Clerk is directed to serve a copy of the petition (Doc. 1) and this Order on the proper respondent, Clair Doll, **Warden of York County Prison**, and on the **United States Attorney**, and to note the address of the United States Attorney on the front of the docket sheet in this case. All documents filed by the parties and by the Court shall be served upon the United States Attorney. *See Rule 4, 28 U.S.C. foll. § 2254.*
3. On or before **September 4, 2018**, the Respondent shall file an answer, motion, or other response to the allegations of the petition. *See Rule 4, 28 U.S.C. foll. § 2254; Rule 5, 28 U.S.C. foll. § 2254.*
4. The Petitioner shall, if he so desires, file a reply to the Respondent's answer or other pleading within **fourteen (14) days** after its service. *See Rule 5(e), 28 U.S.C. foll. § 2254.*
5. A determination as to whether or not the petitioner shall be produced for a hearing will be held in abeyance pending the filing of the Respondent's answer or other pleading.

Date: August 13, 2018

BY THE COURT

s/William I. Arbuckle
William I. Arbuckle
U.S. Magistrate Judge